



ENVIRONMENTAL LAW & POLICY CENTER

Protecting the Midwest's Environment and Natural Heritage

Environmental Law & Policy Center Comments on the Illinois Power Agency's 2011 Draft Procurement Plan *Submitted September 15th, 2010*

The Environmental Law & Policy Center (ELPC) appreciates the opportunity to comment on the Illinois Power Agency's 2011 Draft Procurement Plan (the "Draft Plan") dated August 16, 2010. As noted in the Draft Plan's Introduction and Overview, the Agency is required to develop procurement plans that will "ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time..." 220 ILCS 5/16-111.5(d)(4). This language requires the Agency to take a number of factors into consideration, including importantly, "efficient" and "environmentally sustainable." Moreover, all factors must be considered in determining the "lowest total cost over time," which means that legislature has directed the Agency to consider what prices may look like in the future.

Consistent with this legislative mandate, ELPC submits that the Agency's plan needs to be amended to better address the procurement of solar energy and energy efficiency. As will be discussed below with regard to solar procurement, the IPA should: (1) begin procuring solar energy in 2012 consistent with the solar ramp-up statute and do nothing in 2010 or 2011 that would impair the Agency's ability to comply with the ramp-up schedule in the statute; (2) ensure that a portion of each year's procurement target is purchased through long-term contracts; and (3) develop a program to purchase solar from distributed generation (DG) resources. With regard

35 East Wacker Drive, Suite 1600 • Chicago, Illinois 60601

(312) 673-6500 • www.ELPC.org

Harry W. Drucker, Chairperson • Howard A. Learner, Executive Director

Columbus, OH • Des Moines, IA • Jamestown, ND • Madison, WI • Minneapolis, MN • Sioux Falls, SD • Washington, D.C.



to energy efficiency procurement, the IPA should allow independent third-parties to compete to provide energy efficiency as an alternative resource.

Solar Energy Procurement

On August 19th 2010, three days after the IPA made the Draft Plan available for review, Governor Pat Quinn signed Public Act 96-1437 (20 ILCS 3855/1-75)(the “Statute”). The Statute requires that an increasing percentage of the state’s renewable energy resources come from solar power: 0.5% by 2012, 1.5% by 2013, 3% by 2014, and 6% by 2015. The solar ramp up requirement represents a major change to the Illinois Renewable Energy Standard (RES) and the IPA’s implementation obligations of the same.

The Illinois Public Utilities Act requires the IPA to use a five-year time horizon when formulating its Plan.¹ However, the 2011 Draft Procurement Plan makes no mention of the new solar requirement within the Statute nor does it contain any information about how the IPA proposes to handle the procurement of solar renewable energy credits (SRECs). Therefore, the Draft Plan, as written, fails to comply with the Statute.

ELPC questioned the IPA about this omission at the August 26th Draft Plan Workshop and was told that it was not possible to anticipate what the 2011 solar procurement might look like, or even whether there would be a 2011 solar procurement, because it was possible that (a) the full 6% of the solar obligation under the RES might be procured in the 2010 Long-Term Procurement, or (b) if the full 6% solar obligation was not procured in the 2010 Long-Term Procurement, there may not be sufficient funds available in the Renewable Resources Budget to comply with the solar ramp up requirement.

¹ 220 ILCS 5/16-111.5(b); see Draft Plan at 6, 9.

ELPC submits that both of the potential outcomes outlined above would be unacceptable because they would fail to implement the statute. The Statute intentionally planned for the solar requirement to start with a small procurement in 2012 and ramp up over time for two reasons. First, to give the Illinois solar industry time to develop in a sustainable manner, creating jobs and economic development in Illinois (two key objectives of this legislation, as articulated by legislators and the Governor). Second, to give the IPA time to develop a thoughtful, prudent and forward thinking procurement process for solar energy. There was no indication from the IPA, the Utilities, or their Procurement Administrators that solar would be part of the 2010 Long-Term Procurement until August 25th, less than three weeks before Part 1 proposals and letters of credit were to be due. This unanticipated and tight timeline has not allowed the solar industry to prepare competitive proposals for projects in Illinois.

The IPA should procure renewable energy in a manner that promotes a sustainable, vibrant solar industry in Illinois. Therefore, ELPC recommends:

1. **Solar ramp-up schedule.** The IPA should begin procuring solar energy in 2012 consistent with the solar ramp-up schedule and do nothing in 2010 or 2011 that would impair the Agency's ability to comply with the statute. Procuring SRECs according to the ramp-up schedule will result in more competitive pricing, more jobs, and more benefits to the distribution grid than procuring solar on an unexpectedly abbreviated schedule. Whether or not some amount of solar is purchased through the 2010 Long-Term Procurement, it is essential that the IPA reserve adequate funds in the Renewable Energy Resource Budget to allow for full compliance with the RES, including the solar carve out, over the long-term.

2. **Long-Term Contracts.** The 2011 Procurement Plan should be amended to ensure that a portion of each year's solar procurement target is purchased through long-term contracts. Developers rely on long-term contracts to obtain financing for new projects. Stable revenues enable more favorable pricing. In-state solar development is flourishing in states where long-term contracts are offered as a path for compliance with solar carve outs (e.g., New Jersey). States that procure SRECs only on a year-by-year basis are not benefiting from such investment (e.g., Massachusetts).

We favor a flexible approach whereby bidders can propose the contract terms that allow them to submit the most competitive proposal according to their specific financing arrangement and business plan. We recognize that the Illinois Commerce Commission Order No. 09-0373 fixed contract terms for the 2010 Long-Term Procurement in order to reduce bid variability and enable a price-only bid selection process. However, we believe that fixing these terms reduces the flexibility afforded to prospective respondents, which may reduce the number of bids, thus reducing competition and negatively impacting clearing prices. Providing more options will likely yield a more competitive, lower cost market.

3. **Distributed Generation (DG) Resources.** The IPA should develop a program to enable market participation from behind-the-meter solar systems that are interconnected to the electric grid at the distribution level. Small-scale, rooftop systems are drivers for job creation, economic growth and market diversification in the solar industry; they also serve the electric grid by providing a source of reliable peak power generation. As currently constructed, it is very difficult for small system generators to effectively participate in the IPA's procurement process.

Based on experience in other states, we believe that the DG program could include (1) up-front rebates offered in exchange for the value of long-term SREC production (e.g. 15 years) for residential and small commercial systems, and (2) production-based incentives (PBIs) offered in exchange for SRECs from larger commercial and industrial systems. We encourage the IPA to support an inclusive and transparent workshop process to establish program details by no later than July 1, 2011 so that results can inform the IPA's 2012 procurement plan.

Energy Efficiency Procurement

The Draft Plan recommends "consideration of the purchase of Energy Efficiency as Alternative Resource" ("EEAR") for the Ameren and ComEd portfolios. Draft at 32. However, as outlined below, the Plan fails to allow non-utility entities to compete to provide efficiency.

The Agency wants to examine the cost competitiveness of energy efficiency compared to more traditional resources, and whether consumers can benefit from additional price stability through expansion of efficiency. *Id.* In order to examine these issues the IPA recommends holding workshops in the fall of 2010. *Id.* The draft continues, "the appropriate sources for EEAR bids would be the existing Energy Efficiency Portfolio Standards ("EEPS") programs offered to eligible retail customers in the [electric utility] service region." *Id.*

ELPC disagrees with the premise that only utility energy efficiency programs should be considered by the IPA. While the Public Utilities Act requires electric utilities to run energy efficiency programs, it in no way prohibits any other entities from doing efficiency programs independently from the utilities. See, 220 ILCS 5/8-103 et seq. While it makes sense to include the utility run efficiency programs in the IPA resource mix for purposes of determining Illinois' resource requirements, it also makes equal sense to allow other independent third parties to

energy efficiency programs in to the process. Otherwise, this procurement plan as written would do nothing to increase the efficiency in Illinois beyond the levels already mandated by legislation. As proposed, all it would include is the existing efficiency in a resource plan. Moreover, if efficiency providers can deliver at a lower price than generators, then they should be allowed to provide services and consumers should reap the benefits of lower prices.

The Draft Plan does not discuss why it limits the purchase of efficiency to the utilities, but if the concern is reliability then this can be easily addressed. In terms of the reliability of efficiency, the Draft Plan notes:

[T]he results of the EEPS programs have been factored into the Ameren (electric utility's) load forecasts in a manner similar to that of pre-existing supply contracts for the past two cycles. Additionally, the EEPS programs are in the third year of operation and operate under an evaluation and oversight regime supervised by the ICC. These two factors lead the IPA to determine that resources provided by the EEPS are reliable.

Draft at 32. ELPC submits that there is no reason why additional non-utility efficiency programs cannot be similarly overseen and evaluated by the ICC. Such oversight addresses the reliability concerns, and if the IPA believes it is necessary, ELPC would support a licensing and bonding process for efficiency providers who want to bid in to the process.

Additionally, ELPC notes that when considering the costs and benefits of energy efficiency, the IPA needs to find a way to factor in the long term benefits of efficiency. Many programs provide benefits that go beyond the five year period of the plan, and the lifetime benefits should be factored in to the equation consistent with the legislative mandate to provide “environmentally sustainable service at the lowest cost over time.” If weatherization, new lighting or a new motor has a life of 20 years, that benefit should be factored in to the process.

ELPC strongly supports the IPA's plan to move forward on establishing workshops this fall, and encourages Agency to start the workshops as soon as possible. Many parties have already put considerable time and energy into this issue, and we hope the Agency will set a schedule that moves the workshops along in a relatively short time period such as 6 months. We want to ensure the time frame allows for evaluation of the workshop results in time to include efficiency in the 2011 procurement.

The bottom line is that the law already requires utilities to do a certain amount of energy efficiency. The IPA needs to take action that would go beyond the status quo. Consistent with the goals of efficiency and sustainability, the IPA should consider all available supply side and demand side resources in one planning process. This includes allowing independent third parties to compete to provide efficiency.

Thank you for the opportunity to comment.

Robert Kelter
Senior Attorney

Madeleine Weil
Policy Advocate

Environmental Law & Policy Center